

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TEEDA BARCLAY, JAY OVSAK,
and NICOLE NORDICK,
individually, and on behalf of others
similarly situated,
Plaintiffs,

v.

iFIT Health & Fitness, Inc. *f/k/a*
ICON HEALTH & FITNESS, INC.,
and NORDICTRACK, INC.,
Defendants.

Case No. 0:19-cv-02970-ECT-DTS

**PLAINTIFFS' MOTION TO
EXCLUDE AND/OR STRIKE
DEFENDANTS' CLASS
CERTIFICATION SUBMISSIONS**

Plaintiffs Teeda Barclay, Jay Ovsak, and Nicole Nordick ("Plaintiffs"), on behalf of themselves and others similarly situated, respectfully move the Court for an Order that:

1. Pursuant to Fed. R. Civ. P. 16(f), excludes and/or strikes the following untimely expert witness declarations, reports, or portions thereof:
 - a. Declaration of Harvey C. Voris (Decl. Kade N. Olsen Supp. Defs' Opp. Pls' Mot. Class Cert. [ECF Dkt. 213] ("Olsen Decl."), Ex. 1);
 - b. Declaration of John A. Palmer (Olsen Decl., Ex. 2);
 - c. Excerpts of the Declaration of Randy W. Shumway (Olsen Decl., Ex. 6);
 - d. Declaration of Keith Botner (Olsen Decl., Ex. 13); and
 - e. Declaration of Derk G. Rasmussen (Olsen Decl., Ex. 14).
2. Pursuant to Fed. R. Civ. P. 16(f), excludes and/or strikes all references to those declarations, or arguments relying thereon, from Defendants' Memorandum in Opposition to Plaintiffs' Class Certification Motion [ECF Dkt. 212].

3. In the alternative, in the event that the Court does not exclude and/or strike the aforementioned submissions, that the Court:
 - a. Provide for a time period in which Plaintiffs can depose Defendants' experts;
 - b. Allow for Plaintiffs to file revised merits experts at the Defendants' expense;
 - c. Amend the deadline for Plaintiffs' to file a reply in support of Plaintiffs' Class Certification Motion until May 15.
4. Suspend the briefing schedule in relation to Defendants' Motion for Summary Judgment until after the issues with the filings surrounding Defendants' class certification filings are cured.

This Motion is supported by a contemporaneously filed Memorandum of Law and supporting declarations.

Respectfully submitted,

Dated: March 1, 2024

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